Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JONATHAN R. BURDICK,

Petitioner,

VS.

COMMITTEE ON CHARACTER AND FITNESS OF THE NEW HAMPSHIRE SUPREME COURT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Character and Fitness Committee of the New Hampshire Supreme Court denied Jonathan Burdick procedural due process of law, as guaranteed by the United States Constitution, Amendment 14, in its handling of Mr. Burdick's application for admission to the New Hampshire bar?

2. Whether the New Hampshire Supreme Court denied Jonathan Burdick procedural due process of law, as guaranteed by the United States Constitution, Amendment 14, in its handling of Mr. Burdick's appellate proceedings upon his application for admission to the New Hampshire bar?

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OPINION BELOW

On March 29, 1994, The New Hampshire Supreme Court issued an Order finally denying Petitioner's application for admission to the New Hampshire Bar. On May 18, 1994, The New Hampshire Supreme Court issued an Order denying Petitioner's Motion for Reconsideration and Rehearing.

JURISDICTIONAL STATEMENT

The appellate jurisdiction of this United States Supreme Court is invoked based upon Petitioner's asserted violations of his procedural due process of law as guaranteed by the 14th Amendment to the Federal Constitution.

Petitioner first raised federal issues in this matter on October 2, 1992 in motions filed within the New Hampshire Supreme Court seeking to correct the record below.

STATUTES INVOLVED

N.H. R.S.A. 311:2 (1984 ed.)

311:2 Admission to Practice. Any citizen of the age of eighteen years, of good moral character and suitable qualifications, on application to the supreme court shall be admitted as an attorney.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

PETITION FOR A WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT

STATEMENT OF THE CASE

On or about April 27, 1990, Jonathan R. Burdick, Petitioner herein, filed a Petition for Admission to the New Hampshire Bar (hereinafter Petition for Admission). Mr. Burdick was a candidate for admission to the bar from April 27, 1990 until December 14, 1990, and thereafter became such a candidate again from October 26, 1992 to the present following reinstatement of his Petition for Admission by the New Hampshire Supreme Court upon Mr. Burdick's motion. Mr. Burdick's reinstated Petition for Admission was ultimately denied by the Supreme Court of New Hampshire on April 30, 1994 under the circumstances described herein.

On July 12, 1990, some two and one half months after he had filed his original Petition for Admission, Mr. Burdick assented to a request by the Committee on Character and Fitness of the New Hampshire Supreme Court (hereinafter Committee) for a Personal Interiew pursuant to New Hampshire Supreme Court Rule (hereinafter New Hampshire Rule) 42(5)(i)(b), and Mr. Burdick attended such interview. On August 30, 1990, Mr. Burdick received his Juris Doctor degree from the Franklin Pierce Law Center in Concord, New Hampshire, and on February 27-28, 1991, Mr. Burdick was a successful Examinee for the New Hampshire and Multistate Bar examinations administered in Concord, New Hampshire.

On May 6, 1991, Mr. Burdick assented to a request by the Committee for a second Personal Interview pursuant to New Hampshire Rule 42(5)(i)(b), and attended such interview. On or about May 15, 1991, Mr. Burdick received a congratulatory letter from the New Hampshire Bar Examiners notifying him that he had qualified for membership in the New Hampshire Bar.

On or about May 15, 1991, Mr. Burdick received notice, pursuant to New Hampshire Rule 42(5)(j), from the Committee by letter from James L. Dehart, Esq., Administrator, that the Committee was issuing a formal recommendation and Report (hereinafter R1) pursuant to same that Mr. Burdick be denied admission to the New Hampshire Bar based upon the Committee's appraisal of his character and fitness to practice law. Said R1 listed some 13 issues of substantive concern in this regard.

On or about May 23, 1991, in a somewhat bizarre and rather bewildering happenstance, Mr. Burdick was awakened at home in the middle of the night by uniformed officers of the City of Concord Police Department, homicide detectives of the City of Manchester, New Hampshire Police Department and a representative from the state's Office of the Attorney General, and was questioned in connection with a homicide investigation. Said investigation is relevant to Mr. Burdick's application to the New Hampshire

Bar, and this Petition, only because it apparently caused his then girlfriend, following her own questioning by the Manchester detectives, to abruptly sever all communications with Mr. Burdick which severance of communications played a part in his decision to withdraw his bar application from December 14, 1991 through October 2, 1992.

On June 27, 1991, pursuant to New Hampshire Rule 42(5)(j), Mr. Burdick notified the Committee of his election to appear before it in order to answer and explain the subject matter of R1. In conjunction with such notice, Mr. Burdick filed a written Personal Statement which addressed *seriatim* the substantive concerns of the Committee, as well as certain language within R1 which language Mr. Burdick then contended, and herein continues to contend, was and is both inaccurate and unfairly prejudicial to his Petition for Admission. On August 9, 1991, the Committee convened a formal Hearing. Mr. Burdick appeared *pro se* at the New Hampshire Rule 42(5)(j) Hearing and offered detailed answers and explanations in response to the Committee's concerns as expressed in R1. Mr. Burdick's written Personal Statement was formally adopted as part of his answer and explanation. Notes of the Hearing were taken by a duly appointed stenographer whose services had been secured by the Committee, and an audio tape recording (hereinafter Tape) was created, from which notes and Tape a transcript of the Hearing (hereinafter Transcript, or simply "T" followed by page numbers) was prepared.

On November 4, 1991, some three months after his 42(5(j) Hearing, Mr. Burdick inquired of the Committee as to whether a decision had been reached on the merits of said Hearing. On November 18, 1991, Mr. Burdick received notice from the Committee that pursuant to New Hampshire Rule 42(5)(k) the Committee had voted to issue a second adverse recommendation and Report (hereinafter R2) on the matter of his character and fitness to practice law. R2 *per se* consisted only of a brief passage within a two-page letter dated November 12, 1991 from William R. Prigge, Esq., Committee Chairman to the Honorable W. Stephen Thayer III. Mr. Burdick received his copy of R2 under cover of a letter from Administrator DeHart, together with a certain 90-page transcript which treated of the case of another candidate for admission to the bar named Bernard V. Nardi, Jr. Administrator DeHart's letter advised Mr. Burdick of Mr. Burdick's right to withdraw his application to the bar pursuant to New Hampshire Rule 42(5)(k) prior to the Committee's submission of R2 to the New Hampshire Supreme Court pursuant to same.

R2 contained only the following language in fulfillment of the Committee's obligations under New Hampshire Rule 42(5)(k) to prepare and issue a second report following Mr. Burdick's Hearing (italicized language only, as possibly constitutive of R2):

> A hearing was held on August 9, 1991. *At the hearing, Mr. Burdick continued to rationalize, minimize and justify the various concerns of the Committee.* As a result,the Committee again found that Mr. Burdick failed to establish his good moral character.
> *Mr. Burdick's system of values is so unique that the Committee believes that there is no other substitute [sic] than for the Court being able to read the applicant's own words.* For this reason, I am enclosing a copy of Mr. Burdick's letter of June 27, 1991 with the Personal Statement as well as a copy of the transcript of the August 9, 1991 hearing.To complete the record, I am enclosing a copy of Mr. Burdick's letter of August 13, 1991, with enclosures.

These two italicized sentences comprising R2 were analyzed by Mr. Burdick against the background of character and fitness committee case law, and R2 was determined to fall short of comprising a genuine report as contemplated under New Hampshire Rule 42(5)(k). R2 failed to describe in even de minimis fashion the Committee's argumentative and deliberative thought processes, its operant premises, and any ostensive relationship between Mr. Burdick's past conduct and his present fitness to practice law. In sum, R2 did not admit of any level of detail reasonably sufficient to justify or otherwise explain the Committee's reasons for issuing its second Adverse Recommendation, and thereby failed to afford Mr. Burdick an adequate opportunity to respond to a subsequent Order To Show Cause issuable, and eventually issued, by the New Hampshire Supreme Court under New Hampshire Rule 42(5)(k).

Based upon the procedural and substantive improprieties which Mr. Burdick began to feel were being visited upon him by the Committee, including: (1) the first adverse recommendation; (2) the inaccuracies contained in R1, including its selective reporting of material facts in an out-of-context fashion and wholesale disregard of the salient qualifying and mitigating circumstances offered in earnest; (3) the second adverse recommendation; (4) the Committee's failure to prepare and issue a genuine, as opposed to ersatz, second report; (5) the fact that some three months elapsed between the 42(5)(j) Hearing and his receipt of the second adverse recommendation and copy of R2, such receipt coming only after his formal request for same and then immediately thereafter; (6) the Committee's apparent oversight in failing to honor his request that all correspondence from the Committee be sent to a particular receiving address; (7) his receipt of an improper transcript

belonging to another candidate for admission to the bar; and (8) the confluence and combination of all of these improprieties and inaccuracies, Mr. Burdick surmised that a veritable litany of errors and, quite possibly, negligence was in progress with respect to the Committee's handling of his appellate proceedings governed by New Hampshire Rule 42. Mr. Burdick then further surmised that his own proper Transcript, when received, might prove to be similarly error-laden as well whether or not by dint of any additional mistakes on the part of the Committee. Based upon such surmisal of possible errors in his Transcript, coupled with the fact that the Committee's attempt merely to incorporate the Transcript as part of its R2 — rather than assiduously set forth legitimate counterarguments against his showing of good character — was contrary to New Hampshire Supreme Court preferences, Mr. Burdick requested that the Committee furnish him with good-quality copies of the Tape made of the Hearing in order that he might gauge the accuracy of the proper Transcript which was then presumably en route from the Committee.

On November 24, 1991, Mr. Burdick received an ostensibly correct copy of the proper Transcript under cover of a letter dated November 21, 1991 from Administrator DeHart, together with a set of four mislabeled, poor-quality audio cassette tapes. On November 26, 1991, Mr. Burdick received another letter from Mr. DeHart which letter requested return of the improper Bernard V. Nardi, Jr. transcript and informed Mr. Burdick that possibly insufficient postage had been affixed by the Committee to the envelope containing the proper Transcript then en route to him. On November 28, 1991, Mr. Burdick returned the Nardi, Jr. transcript to the Committee. Despite the poor quality of the audio cassette tape copies afforded him, Mr. Burdick managed through repeated, diligent listenings to discern the existence of some 1,334 (One Thousand Three Hundred Thirty-Four) errors in his Transcript, said errors varying widely in degree of possible harm to his envisioned response to any Order To Show Cause issuable, and eventually issued, by the New Hampshire Supreme Court.

Many of the errors in Mr. Burdick's Transcript were and are quite obviously substantial and material, such as: numerical errors of an ordinal magnitude; incorrect representations of the person speaking on the record; wholesale textual omissions; and similar such errors (referred to in the record as Type A errors). Mr. Burdick calculated that his Transcript contains some 422 (Four Hundred Twenty-Two) Type A errors. Most of the remaining errors in his Transcript, aside from some eight stylistic considerations (classified as Type C errors) and a few substantive clarifications (classified as Type D errors, not transcriptive errors per se) comprise seemingly common transcriptive mistakes committed in the rendering of vocalized pauses and

simple word-repetitions; these are referred to in the record as Type B errors. Said Type B errors are of two distinct varieties: being printed in the Transcript while not having been uttered at the Hearing and/or not discernible on the tape copies afforded Mr. Burdick (referred to as Type B1 errors); or being transcriptive omissions wherein such vocalized pauses and word-repetitions were actually uttered at the Hearing and are discernible on said tape copies yet do not appear in the printed Transcript (referred to as Type B2 errors). Mr. Burdick calculated that his Transcript contains some 912 (Nine Hundred Twelve) Type B errors of both varieties.

In a fairly overwhelming number of the discerned instances of Type B errors, both Mr. Burdick and the Committee members are underreported as to their respective utterings of vocalized pauses and word-repetitions, i.e. are the subjects of Type B2 errors. The Committee members, however, were so underreported with a degree of frequency 3 (three) times greater than was Mr. Burdick, thus invariably causing any readers of the Transcript to perceive the Committee members as having been substantially more well-spoken at the Hearing than they actually were, in absolute terms as well as relative to the well-spokenness of Mr. Burdick.

On December 14, 1991, his thirtieth birthday, Mr. Burdick elected to withdraw formally his application to the New Hampshire Bar, and did so withdraw his application via letter dated December 16, 1991 to the Hon. W. Stephen Thayer, III. Mr. Burdick chose to withdraw his application due to: (1) discouragement and depression following his beloved's severing of communications following the aforementioned homicide investigation; (2) his discouragement at the incorrect adverse recommendations of the Committee as regarded his application to the Bar; and (3) his discouragement at the improper manner at which the Committee's erroneous decisions had been arrived as evidenced by its various administrative errors.

On October 2, 1992, Mr. Burdick filed in the New Hampshire Supreme Court a Motion for Reinstatement of Petition for Admission to the Bar (hereinafter Motion for Reinstatement), which motion sought reinstatement of his application for admission. In conjunction with said Motion for Reinstatement, Mr. Burdick filed a Motion for Admission to the Bar, which requested that New Hampshire Supreme Court exercise its prerogative under New Hampshire Rule 42(5)(k) to admit him to the New Hampshire Bar notwithstanding the Committee's adverse recommendations.

Also on October 2, 1992, Mr. Burdick filed a Motion to Compel Production Of A Document Not Yet In Existence But Whose Existence Is Required By Law (hereinafter Motion to Compel), which motion sought to cause the Committee to produce a genuine, as opposed to its perfunctory, R2, pursuant to the Committee's duties under New Hampshire Rule 42(5)(j)

and as required by due process of law under the New Hampshire Constitution, Article ~~ and the United States Constitution, Amendment 14. In particular, said Motion to Compel offered an inarguably standard definition of the term "report", a compelling justification for its acceptance as a controlling definition under the circumstances at bar, and at-length argument that R2 in fact failed to satisfy such appropriate definition.

In addition to these aforementioned motions, Mr Burdick also filed on October 2, 1991 a Motion to Correct Transcript, which motion sought as primary relief the correction of all Type A, B and C errors in his Transcript and which suggested a means of alternative relief with respect to the Type B errors (both B1 and B2 varieties).

On October 13, 1992, the Committee filed a Response of Character and Fitness Committee to Motion for Reinstatement of Petition for Admission to the Bar (hereinafter Response to Motion for Reinstatement). Said Response to Motion for Reinstatement did not object to the reinstatement of Mr. Burdick's application, but set forth various general denials regarding the assertions made by Mr. Burdick respecting the Committee's mishandling of his Petition and his appellate proceedings thereupon. In conjunction with said motion, the Committee also filed a brief Objection to Motion to Admission to the Bar.

Also on October 13, 1992, the Committee filed an Objection to Motion to Compel Production Of A Document Not Yet In Existence But Whose Existence Is Required By Law (hereinafter Objection to Motion to Compel), which Objection to Motion to Compel alleged that R2 in fact satisfied the requirements of New Hampshire Rule 42(5)(k) as well as due process of law under the New Hampshire and United States Constitutions. Said Objection to Motion to Compel, however, failed to counter effectively any of the cogent arguments set forth in the Motion to Compel: the Objection was abjectly silent on the definitional matter surrounding the term "report", and in fact, as the Motion to Compel contended and the Committee's Objection to Motion to Compel admitted, R2 merely reiterated the findings of the Committee's R1 sans any further development whatsoever. In sum, the arguments set forth in Mr. Burdick's Motion to Compel concerning the Committee's mere and unusual incorporation of an error-laden Transcript were unmet by any forthright, specific counterarguments in the Objection.

In addition to these aforementioned objections, the Committee on October 13, 1992 also filed an Objection to Motion to Correct Transcript. Said Objection asserted merely that the accuracy of the Transcript had been certified by the person who did the transcribing; that the issue of the inaccuracy of the Transcript was a dispute solely between Mr. Burdick and the Legal Deposition Service; that the Committee did not have the authority to correct

the Transcript; and that the errors alleged by Mr. Burdick were not material and did not affect the decision of the Committee to recommend denial of Mr. Burdick's admission to the bar. The Objection to Motion to Correct failed on its face to address the main issue raised in the Motion to Correct: that the errors would adversely and unfairly prejudice Mr. Burdick, not in the eyes of the Committee, but rather in the eyes of the New Hampshire Supreme Court upon its appellate review. Moreover, said Objection merely asserted, without any argument, that the errors alleged by Mr. Burdick were immaterial; and said Objection evidently ignored the simple fact that Mr. Burdick was seeking correction of his Transcript not from the Committee itself, but rather from the New Hampshire Supreme Court.

On October 26, 1992, the New Hampshire Supreme Court issued a clerk's Order which: (a) granted the Motion for Reinstatement; (b) denied without prejudice the Motion for Admission; (c) denied without prejudice the Motion to Correct Transcript; (d) denied the Motion to Compel; and, (e) inter alia, ordered Mr. Burdick to show cause, pursuant to New Hampshire Rule 42(5)(k), why his application for admission to the bar should not be denied.

On November 5, 1992, Mr. Burdick filed in the New Hampshire Supreme Court a Motion to Extend Time which motion requested the customary 30 (thirty) days to respond to said Order to Show Cause, rather than the 14 (fourteen) days which the Order had allotted him. Also on November 5, 1992, Mr. Burdick filed three separate motions to reconsider, numbered I, II and III, which motions requested the New Hampshire Supreme Court to reconsider respectively its denials of the Motion to Compel, the Motion to Correct Transcript, and the Motion for Admission.

On March 12, 1993, the New Hampshire Supreme Court issued a clerk's Order which granted the Motion to Extend Time and ordered Mr. Burdick to show cause, on or before April 11, 1993, without further continuance, why his application for admission to the bar should not be denied. On April 10, 1993, Mr. Burdick submitted a 206-page Response to Order to Show Cause Why Application for Admission to the Bar Should Not Be Denied (hereinafter Response to Order to Show Cause).

On May 12, 1993, the New Hampshire Supreme Court, by clerk's Order, set the matter down for oral argument on June 3, 1993 as docket number SMC-92-029.

On June 3, 1993, in closed proceedings, Mr. Burdick appeared *pro se* before the New Hampshire Supreme Court and the Committee appeared in the persons of James L. DeHart, Esq., Administrator and Howard J. Zibel, Esq., Clerk of the New Hampshire Supreme Court qua member of the Committee. The New Hampshire Supreme Court, Brock, J., presiding, heard oral argument from both parties and the case was thereafter submitted.

On July 26, 1993, having notified the New Hampshire Supreme Court on April 16, 1993 of his intention to do so, Mr. Burdick filed a brief Motion to Amend which motion sought to amend a few small but material errors of typography contained in his Response to Order to Show Cause. Such errors had been introduced to said Response inadvertantly, in that Mr. Burdick had been fashioning his document on a word processing program installed on a personal computer belonging to Prof. Dr. G. A. Jameson, James S. McDonnell Distinguished Professor of Aerospace Engineering at Princeton University, for whom Mr. Burdick had at the time been working, and Dr. Jameson's computer suddenly and inexplicably failed to permit access to Mr. Burdick's files on the very day prior to the filing deadline thus necessitating an "eleventh hour" assembly of said Response from various bits and pieces culled from assorted hard copy drafts.

On March 22, 1994, Mr. Burdick by letter of even date wrote Howard J. Zibel, Esq., Clerk of the New Hampshire Supreme Court inquiring as to why a decision had not been reached and rendered in SMC-92-029. By clerk's Order dated March 29, 1994, some nine months following oral argument, the New Hampshire Supreme Court: (a) granted the Motion to Amend; and (b) denied Mr. Burdick's application to the bar. Said clerk's Order stated in brief and summary fashion that "a formal written opinion is not necessary for the disposition of this matter," and cited the one and only modern New Hampshire reported decision on character and fitness committee law, *viz.*, *Application of Appell*, 116 N.H. 400, 401 (1976) despite the inappositeness of said case.

On March 30, 1994, prior to having received a copy of the March 29, 1994 clerk's Order, Mr. Burdick wrote to Administrator DeHart inquiring as to why he Mr. Burdick had never been afforded an opportunity to submit corrections to his Transcript short of filing a formal motion with respect to same. The impetus of this request was borne of the fact that Mr. Burdick, then employed as a law clerk in the Litigation Department of the McDonnell-Douglas Corporation, was routinely summarizing depositions as part of his employment duties and came to notice that counsel in such cases invariably provided the opposing party with: (a) notice of their opportunity to challenge perceived inaccuracies in the deposition transcript prior to its filing; (b) a copy of the transcript; and (c) a special form for notating any such inaccuracies.

On March 31, 1994, also prior to having received his copy of the March 29, 1994 clerk's Order, Mr. Burdick filed a second Motion to Amend (hereinafter Motion to Amend II). Said Motion to Amend II requested that the New Hampshire Supreme Court allow an amendment of the Response to Order to Show Cause in order to permit Mr. Burdick to argue as additional

grounds for relief the fact that he had been denied an opportunity ab initio to submit corrections of the discerned Transcript errors.

On April 13, 1994, the New Hampshire Supreme Court issued a clerk's Order stating that, since the court denied Mr. Burdick's application for admission to the New Hampshire Bar on March 29, 1994, the Motion to Amend II filed on April 4, 1994 was moot.

On April 20, 1994, Mr. Burdick received a letter from Administrator DeHart dated April 18, 1994 in which Mr. DeHart stated that he had discussed Mr. Burdick's letter of March 30, 1994 with the Chair of the Committee. Mr. DeHart's letter of April 18, 1994 stated further only as follows: "The transcript of the hearing held on August 9, 1991 was a hearing transcript, not a deposition transcript. You were sent a copy of the transcript."

On April 28, 1994, Mr. Burdick filed a Motion to Reconsider which motion sought to impel the New Hampshire Supreme Court to reconsider its denial of his admission to the bar. Said Motion to Reconsider argued that the failure of the Committee to afford him an opportunity to correct mistakes in his Transcript prior to the Committee's filing of same represented new and independent due process grounds for the court to consider, which grounds had not been apparent to Mr. Burdick prior to his aforementioned employment as a law clerk, and that the distinction expressed in Administrator DeHart's letter of April 18, 1994 between a hearing transcript and a deposition transcript was immaterial and evasive. No objection to this Motion to Reconsider was filed.

On May 18, 1994, the New Hampshire Supreme Court issued a clerk's Order denying Mr. Burdick's Motion to Reconsider.

REASONS FOR GRANTING PETITION FOR CERTIORARI

In the case now before this Court on Petition for Writ of Certiorari, the Character and Fitness Committee of the New Hampshire Supreme Court submitted an R1 which distorted the record below, failed to specify explicitly and adequately any rational relationship between Mr. Burdick's substantive conduct at issue and his fitness to practice law, filed an error-laden Transcript it saw fit to merely incorporate in its R2 contrary to New Hampshire Supreme Court preferences as expressed in the New Hampshire Rules, committed numerous administrative errors which repeatedly plagued and enfettered Mr. Burdick in his attempts to demonstrate his good moral character, and submitted to the New Hampshire Supreme Court an R2 which merely reiterated its R1 and branded Mr. Burdick's system of values as "unique" in an overly vague, derogatory sense of that term. *See e.g. The Random House Dictionary of the English Language* (2d ed. unabridged, 1987) at 2074, def. 5. Petitioner first raised federal issues of procedural due process on October 2, 1992 in motions filed within the New Hampshire Supreme Court which motions sought to correct the record below. The New Hampshire Supreme Court failed or refused to correct these procedural shortcomings, thus presenting a case before this Court in which a rational relationship between Mr. Burdick's conduct at issue, and his character and fitness to practice law, has not been articulated. If Mr. Burdick is to be legally denied his license to practice law, such articulation must be demonstrated. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957); *see also Hallinan v. Committee of Bar Examiners*, 65 Cal.2d 447, 459-61, 421 P.2d 76, 83-85, 55 Cal.Rptr. 228, 237-39 (1966); *and see Cord v. Gibb*, 219 Va. 1019, 1022, 254 S.E.2d 71, 73 (1979).

In the first place, Mr. Burdick's system of values is not so unusual as the Committee's R2 would have it seem. To any small extent that it may in fact be so, it was nonetheless improper of the Committee to merely label a bar applicant "unique" and pretend that such label constitutes a genuine report. *See e.g.* R.J. Gerber, *Moral Character: Inquiries Without Character*, 57 Bar Examiner (1988) at 21 (character and fitness process must not be permitted to discriminate against "unusual" people merely because they are unusual; public receives only haphazard protection and loses valuable dissident voices that could speak with courage for unpopular views). *See also* D. Rhode, *Moral Character as a Professional Credential*, 94 Yale L.J. 3 (hereinafter Rhode) at 501:

> The definition of "unworthy" [in the Pennsylvania character assessment system] was quite elastic. Those rejected by one county

> board in 1929 included individuals deemed "dull," "colorless," "subnormal," "unprepossessing," "shifty," "smooth," "keen," "shrewd," "arrogant," "conceited," "surly,", and "slovenly" [citation omitted].

The New Hampshire Supreme Court's acceptance of the Comittee's R2 as a genuine report in Mr. Burdick's case was tantamount to the publishing of a modern sequel to this sad chapter in the history of American character and fitness law, in effect adding the term "unique" to the rather inauspicious pantheon cited by Professor Rhode. Indeed, as Rhode suggests, "[s]uch laconic approaches raise obvious due process issues," *Rhode* at 531. Such approaches have in times past been countenanced by appellate courts, *see e.g. Application of Appleman*, 280 A.D. 865, 113 N.Y.S. 2d 780 (N.Y. App. Div. 1952); *In re Weinstein*, 150 Or. 1, 9, 42 P.2d 744, 747 (1935). Modern courts, however, have tended to follow the doctrine announced in *Schware*. *See e.g. In re Barkin*, 648 F.2d 1386, 1388 (1st Cir. 1983) (vague denial of admission to the bar in violation of due process requirements).

The particular substantive concerns of the Committee as set forth in R1 and reiterated without development in R2 were duly taken up *seriatim* by Mr. Burdick, first in his written Personal Statement filed in partial response to the Committee's R1, then in his testimony at the August 9, 1991 Hearing, and finally in his 206-page Response to Order to Show Cause and oral argument thereupon. The Rules of this Court governing the filing of a Petition for Certiorari do not permit Mr. Burdick to refile such extended treatment of the Committee's substantive concerns; however, the following descriptions of the record with respect to the Committee's concerns as announced in R1 will permit this Court to recognize the procedural injustices which have been visited upon Mr. Burdick by the Committee and condoned by the New Hampshire Supreme Court.

With regard to an issue of youthful exuberance in which Mr. Burdick attempted, at the age of 20, to impress his erstwhile employers and instead wound up facing a charge of forgery (which charge was ultimately dismissed), the Committee, rather than accept Mr. Burdick's initial explanations, instead chose to merely lift selected portions of such explanations and insert them into its R1 in an astonishingly out-of-context manner. Mr. Burdick was thereby forced to pursue appellate proceedings on the issue, and to answer Committee questioning as to the details of this painful experience which had occurred approximately ten years prior to the Hearing. *See* Transcript (hereinafter "T," followed by appropriate page numbers) at T5-31; Response to Order to Show Cause (hereinafter "R," followed by appropriate page numbers) at R51. In effect, the Committee's line of questioning constituted something of a "retrial" on the issue of Mr. Burdick's assertions

of diminished capacity in the context of the conduct giving rise to the forgery charge, which veritable retrial cannot be condoned by this Court. It is true that bar admission authorities may independently assess evidence of prior misconduct notwithstanding an acquittal or dismissal of criminal charges relating to that misconduct. *In re Leff*, 127 Ariz. 62, 618 P.2d 232 (Ariz. 1980) (no criminal charges filed for impeding an IRS investigation); *Florida Board of Bar Examiners re L.K.D.*, 397 So.2d 673, 676 (Fla. 1981); *Hall v. Committee of Bar Examiners*, 25 Cal.3d 730, 159 Cal.Rptr. 848, 602 P.2d 768 (1979). Such reexaminations, however, at times extend too far. *See Martin B. v. Committee of Bar Examiners*, 33 Cal 3d 717, 661 P.2d 160, 190 Cal Rptr. 610 (1983) (although bar admission authorities may assess evidence of misconduct even if criminal charges based on the misconduct, committee erred in conducting a "retrial" of ten-year-old charges). Clearly, the Committee in Mr. Burdick's case ventured too far. *See* T5-T27. Rather than attempting to harangue Mr. Burdick in a display of their cross-examining skills, the Committee members should have commended Mr. Burdick for standing by his prior explanations rather than attempting to play the false penitent for the sake of what the Committee probably expected to hear. *See e.g. Florida Board of Bar Examiners re L.K.D.*, 397 So.2d 673, 76 (Fla. 1981); *and see Hall v. Committee of Bar Examiners*, 25 Cal.3d 730, 159 Cal.Rptr. 848, 602 P.2d 768 (1979). The record clearly indicates that this issue of a ten-year-old putative forgery cannot be rationally related to any unfavorable expectations on the part of the Committee as regards Mr. Burdick's character and fitness to practice law.

With regard to an issue of Mr. Burdick's ceasing to attend monthly probation hearings following his prosecution on the forgery charge, prior to its dismissal, the Committee chose not to question Mr. Burdick's explanations as offered prior to, and during, the August 9, 1991 Hearing. This Court may conclude only that despite the Committee's re-inclusion of this issue in its R2, the Committee was unprepared to explore the issue further and that the conduct at issue would not present an obstacle to his showing of good character and fitness to practice law. *See* T27-28; *and see* R52.

Similarly, with regard to an issue of Mr. Burdick's being prosecuted and fined $100 (One Hundred Dollars) on a misdemeanor charge of breaking and entering into his own erstwhile apartment following his release from incarceration on the forgery charge, the Committee chose not to question Mr. Burdick's explanations as offered prior to, and during, the August 9, 1991 Hearing. This Court may conclude only that despite the Committee's re-inclusion of this issue in its R2, the Committee was unprepared to explore the issue further, and that the conduct at issue would not present an

obstacle to his showing of good character and fitness to practice law. *See* T28-30 *and see* R52-53.

With regard to an issue of Mr. Burdick's writing of poetry and love-letters to various women during his college days, such that one or two women complained and a result of one complaint Mr. Burdick was placed on disciplinary probation by college officials as an admittedly cumbersome administrative means of ensuring he would keep his promise to cease such writing to the complainant, the Committee's positions represent something of a "flower strewn march, unpricked by the thorns of reason and evidence." Mr. Burdick explained to the Committee that he had been desirous of securing said complainant's attentions, had written some poetry to her, and had stopped writing to her when asked to do so. At the 42(5)(j) Hearing, the Committee embarked rather unsteadily upon several lines of questioning, for example, as regards the propriety of an attorney writing poetry to a divorce client; which question Mr. Burdick evidently answered to the satisfaction of the Committee. *See* T35-38. The Committee also embarked upon an equally unsteady line of questioning regarding whether an "experimentalist writer" such as Mr. Burdick would be prone to "excess experimentalism in pleadings or legal theories," *see* T41-46, yet the record is devoid of any attempt by said Committee to forge the rhetorical import of such questioning into any rational relationship between the conduct at issue and Mr. Burdick's character and fitness to practice law. As regards the issue of his creative writings generally, Mr. Burdick offered in his Response to Order to Show Cause something of a tour-de-force in philosophy of poetry, see R53-79, to which the Committee finally responded in R2 by merely repeating the conclusory element of its position set forth in R1 at 16: "7. unsolicited writings in college caused some women to complain and, in one case, it [sic] led to disciplinary probation."

In its examination of the record below, this Court may conclude only that the issue of Mr. Burdick's creative writing cannot reasonably be held to present any sort of obstacle to his intended practice of law because the Committee and the New Hampshire Supreme Court failed to construct the requisite rational relationship between the conduct at issue and character and fitness to practice. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957).

With regard to an issue of Mr. Burdick's "informal method of contributing to the financial support of his daughter [with] payments since his law school graduation [being] nominal," Mr. Burdick offered proof of: (a) his diligent negotiations with the Commonwealth of Massachusetts for reduced payments during his final semester of college and his legal education; (b) a forced renegotiation at the behest of Massachusetts authorities of same, dur-

ing his first semester of law school, culminating in a support determination hearing at which Mr. Burdick's prior support obligations were affirmed and the case officer upbraided by the presiding judge; (c) the fact that his daughter and daughter's mother came from a fairly well-to-do family, being the beneficiaries of sizable trusts; (d) the fact that he had consistently and diligently fulfilled his support obligations throughout all periods covered by the Massachusetts court order, even to the extent of overpayment; (e) his attempt to fulfill his ongoing support obligations as best he could under his then present circumstances, which circumstances were characterized by, inter alia, a lack of full-time employment and a lack of his license to practice law; and (f) his intention to support his daughter in a manner commensurate with the salary of a practicing attorney whose license had been secured. At the August 9, 1991 Hearing, the Committee questioned Mr. Burdick vigorously with regard to the various part-time jobs he had held, and how much child support he had been remitting for his daughter. *See* T47-84. In the midst of such questioning, one of the Committee members discovered that Mr. Burdick had been working part-time as a legal assistant for a local construction company, and the Committee member embarked upon a rather lengthy detour into a question of whether Mr. Burdick had been practicing law without a license; however, Mr. Burdick demonstrated that he had complied with the laws of New Hampshire governing appearances by non-attorneys. *See* T73-75. At another point, a Committee member launched into a brief digression as to whether Mr. Burdick should have arranged for some sort of stipulation between himself and his daughter's mother regarding his support obligations, despite the fact that no proceedings of any sort had ever been initiated by his daughter's mother, *see* T82-83. The Committee's ultimate response to Mr. Burdick's reasoned argumentation consisted of mere reiteration, in R2 at 1, of its conclusory language found in R1 at 16: "8. [I]nformal method of making nominal contributions to the financial support of his daughter."

In its examination of the record below, this Court may conclude only that the issue of Mr. Burdick's fulfillment of his support obligations cannot reasonably be held to present any sort of obstacle to his intended practice of law because the Committee and the New Hampshire Supreme Court failed to construct the requisite rational relationship between the conduct at issue and character and fitness to practice. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957).

With regard to an issue of Mr. Burdick's fulfullment of his student loan obligations, the Committee posed this matter by stating that Mr. Burdick had neither made payments on any of his student loans nor provided any written agreements showing that he had worked out a future payment plan

with any of his creditors. In fact, Mr. Burdick had made some small payments to some of these creditors and could not make more substantial or regular payments at the time due to the meager circumstances of his employment following denial of his admission to the bar. During such difficult economic times, Mr. Burdick diligently sought and received various hardship forbearances from his student loan creditors, and also managed to secure an oral guarantee from one of them to consolidate all of his outstanding loans so to provide for a single and lower monthly payment. The selfsame lender, however, later wrote to Mr. Burdick of its decision that his loan consolidation would have to be effected by one of his other lenders due to the amounts of the loans involved. Thus, the Committee evidently decided in its R2 to phrase the issue as being characterized by a lack of written proof on the part of Mr. Burdick, even intimating at the second personal interview that Mr. Burdick was attempting to use the Committee's failure to license him as an excuse to not pay his student loans. This kind of approach should not be condoned by this Court. *See e.g.* R.J.16 Gerber, *Moral Character: Inquiries Without Character*, 57 Bar Examiner (1988) at 52: "The character and fitness inquiry should not be used to collect on speeding tickets, parking fines, and child support, all of which [attempts] debase the [character and fitness inquiry] enterprise." A brief review of the record shall enable this Court to side with Mr. Burdick as regards his intention, but then present inability, to make suitable payments on his student loans.

With respect to an issue of Mr. Burdick's having left the employ of three previous employers on terms unfavorable to him, Mr. Burdick clearly demonstrated to the Committee that in each case it was the employer which was to blame for such terms. In the cases of his law clerking, Mr. Burdick in the first case objected to certain requests and behaviors exhibited by one Attorney Paul Rinden, a local attorney who, Mr. Burdick has been told, had been censured by the Professional Conduct Committee on more than one occasion for excessive drinking. As a result, Mr. Burdick felt compelled to resign his position. Mr. Burdick sued Attorney Rinden in the Merrimack County Superior Court, with the suit being dismissed upon Attorney Rinden's motion under curious circumstances (*see* somewhat unprofessional comments of Judge V. Dunn as reported by Mr. Burdick at T93 and R136, uncontroverted by the Committee). In the case of his performing title searches for the firm of Hibbard & Spinella, P.A., Mr. Burdick failed to receive an expense advance which had been promised in writing by Attorney Hibbard and, as a result, Mr. Burdick had to borrow travel funds from his supervisor which funds were necessary for his title searching duties. When Attorney Hibbard learned of Mr. Burdick's borrowing of such funds, he ordered said supervisor to terminate Mr. Burdick's employment, stating that he had decided to make the promised expense advances "provisional". Later,

Mr. Burdick asked Attorney Hibbard on several occasions for a copy of the written memorandum in which Attorney Hibbard had promised the advances, and on each occasion Mr. Burdick was put off by Attorney Hibbard and promised that such copy would be forthcoming. In the case of Guardsmark, Inc. Mr. Burdick and several other security officers had been promised, in their employment contracts, raise reviews after a certain period of time and after such time had elapsed, they had received neither raises nor raise reviews. Mr. Burdick called corporate headquarters to inquire, and when his local supervisor found that he had done so, said supervisor called Mr. Burdick and fired him as a result of such whistle-blowing. The Committee failed to respond to any of Mr. Burdick's explanations, and merely continued to reiterate the fact that there had been these employment terminations. In sum, the Committee failed to delve into the facts of these terminations, in abject failure of its investigative duties. This Court may only conclude that these circumstances cannot present an obstacle to Mr. Burdick's becoming a member of the bar.

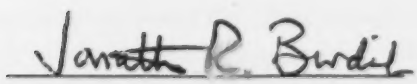
With respect to issues regarding Mr. Burdick's alleged possession of a controlled substance, and his offer to share same with some students who were under the age of 18, Mr. Burdick offered reasonable explanations of his behavior, apologies for his behavior, and attempts to bring forth various mitigating circumstances. The Committee, however, accused Mr. Burdick of trying to justify the behavior at issue. Mr. Burdick offered an extended treatment of these circumstances in his Response to Order to Show Cause, *see* R140-205, drawing upon legal and scientific sources of the highest repute. The Committee's examination of Mr. Burdick's presentation, however, was clouded by visceral reactions and stern moralizing; for a complete picture of these reactions on the part of the Committee, this Court must peruse the Transcript and Mr. Burdick's Response to Order to Show Cause. Such perusal would underscore the fact that while, as Mr. Burdick admitted, these alleged actions were morally wrong, still they were not so wrong as to prevent his admission to the bar; or, in the alternative, that these actions were not shown by the Committee to be rationally related to the practice of law such that Mr. Burdick's admission to the bar must be denied. Mr. Burdick offered ample case law in support of the proposition that no jurisdiction has in recent times precluded an applicant's admission on the basis of conduct such was at issue here. *See e.g. In re Higbie*, 99 Cal Rptr. 865, 493 P.2d 97, 103 (Cal. 1972) (*citing In re Hatch*, 10 Cal.2d 147, 151, 73 P.2d 885 (1937) *and citing In re Craig*, 12 Cal.2d 93, 97, 82 P.2d 442, 444 (Cal. 1938)); *Application of Strait*, 120 N.J. 477, 577 A.2d 149 (1990); *Application of A.T.*, 286 Md. 507, 408 A.2d 1023 (1979); *State ex rel. Okla. Bar Ass'n v. Denton*, 598 P.2d 663, 668 (1979).

From all of the foregoing, it is shown that this Court may readily find that Mr. Burdick was denied procedural due process of law with respect to substantive issues which are not as obviously damning of Mr. Burdick's character and fitness to practice law as the Committee, in its various incomplete and erroneous characterizations, would have the New Hampshire Supreme Court believe. Mr. Burdick's argument for this Court's granting of his Petition for Certiorari, as demonstrated above, is that he was not afforded adequate procedures. *See e.g. Layon v. North Dakota State Bar Board*, 458 N.W.2d 501 (ND 1990). The applicant in *Layon* argued that he was not afforded notice specific enough for him to develop a proper defense, *Layon* at 507. The North Dakota Supreme Court held that while the reasons in Layon's notice were not "models of specificity", Layon failed to seize his opportunity to request that such reasons be made more specific and hence Layon was not denied due process. In the instant case, the record is replete with examples of Mr. Burdick, via argumentation and motions, requesting that the Committee specify in its R2 not mere reiteration of its R1, but its Constitutionally required rational relation of the conduct at issue to his character and fitness to practice law. This he Committee failed to do. Such failure of the Committee, coupled with the fact that cases of similar conduct in other jurisdictions have been decided differently, militate in favot of this Court granting Mr. Burdick's Petition for Writ of Certiorari.

CONCLUSION

For all of the reasons argued above, Mr. Burdick asks this Court to grant this Petition for a Writ of Certiorari.

Respectfully Submitted,



Jonathan R. Burdick
Petitioner Pro Se

APPENDIX A

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-92-029, In the Matter of Jonathan R. Burdick, the court upon May 18, 1994, made the following order:

Applicant's motion for reconsideration is denied.

Howard J. Zibel,
Clerk

APPENDIX B

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-92-029, In the Matter of Jonathan R. Burdick, the court upon April 13, 1994, made the following order:

Since the court denied applicant's application for admission to the New Hampshire Bar on March 29, 1994, applicant's motion to amend, filed on April 4, 1994, is moot.

Howard J. Zibel,
Clerk

APPENDIX C

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-92-029, In the Matter of Jonathan R. Burdick, the court upon March 29, 1994 made the following order:

Applicant's motion to amend response is granted.

Having considered the letters of the character and fitness committee dated May 15, 1991, and November 12, 1991, the record of the proceedings before the character and fitness committee, the applicant's response to show cause order as to why his application for admission to the bar should not be denied, and the oral argument of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this matter. The record of these proceedings supports the findings of the committee on character and fitness. Those findings, in turn, support the committee's conclusion that the applicant has failed to meet his burden of proving his good moral character. See Application of Appell, 116 N.H. 400, 401 (1976); Sup. Ct. R. 42 (5) (f). Jonathan R. Burdick's application for admission to the New Hampshire Bar is, therefore, denied.

Application denied.

Howard J. Zibel,
Clerk

APPENDIX D

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-92-029, In the Matter of Jonathan R. Burdick, the court upon May 12, 1993 made the following order:

Having reviewed the report of the character and fitness committee and Mr. Burdick's response to show cause order, the court hereby sets the matter down for oral argument as the last case in the afternoon session of Thursday, June 3, 1993. The parties shall check in at the clerk's office for oral argument no later than 2:00 p.m.

Howard J. Zibel
Clerk

APPENDIX E

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-92-029 In the Matter of Jonathan R. Burdick the court upon March 12, 1993 made the following order:

Applicant's motions to reconsider (I, II, and III) are denied. Applicant's motion to extend time is granted. Applicant shall show cause, on or before April 11, 1993, without further continuance, why his application for admission to the New Hampshire Bar should not be denied.

Howard J. Zibel
Clerk

APPENDIX F

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

O R D E R

SMC-92-029, In the Matter of Jonathan R. Burdick

Applicant's motion for reinstatement of petition for admission to the bar is granted. Motion for admission to the bar is denied without prejudice to further proceedings in this matter. Motion to correct transcript is denied without prejudice to the applicant arguing in further proceedings in this matter any substantive or material discrepancies in the transcript. Motion to compel production of a document not yet in existence but whose existence is required by law is denied.

The committee on character and fitness having by letters dated May 15, 1991, and November 12, 1991, filed its adverse reports recommending that Jonathan R. Burdick be denied admission to the New Hampshire Bar, IT IS HEREBY ORDERED,

1) that copies of this order and the committee's letters be served on Mr. Burdick by certified mail, return receipt requested, restricted delivery; and

2) that Mr. Burdick shall, in accordance with Supreme Court Rule 42(5)(k), show cause by filing with this court on or before November 12, 1992, why his application for admission to the New Hampshire Bar should not be denied, including any relevant information since the last hearing before the committee on character and fitness.

Date: October 26, 1992

ATTEST: Howard J. Zibel, Clerk

APPENDIX G

November 12, 1991

Hon. W. Stephen Thayer, III
Associate Justice
New Hampshire Supreme Court
Noble Drive
Concord, New Hampshire 03301

Re: Jonathan R. Burdick

Dear Judge Thayer:

Pursuant to New Hampshire Supreme Court Rule 42(5)(k), the Committee on Character and Fitness is submitting this second adverse report with respect to Jonathan R. Burdick's application for admission to the Bar of New Hampshire.

Following a formal hearing, the Committee found that Mr. Burdick failed to meet his burden of proving his good moral character. Therefore, the Committee recommends that he not be admitted to the New Hampshire Bar.

On May 15, 1991, the Committee submitted its first adverse report to the Court (copy enclosed) on the following findings:

1. failure to recognize in 1982 that it was wrong to take and use company checks without authorization.
2. use of a remaining company check in 1982 for return air fare.
3. blaming his actions with regard to the forgery matter on others.
4. telling the Committee as recently as July 12, 1990 that he did not feel his actions were morally or criminally wrong.
5. ceasing to attend monthly probation meetings following the forgery charge.
6. drinking to excess after release on the forgery charge and removing a bookshelf belonging to his landlady.
7. unsolicited writings in college caused some women to complain and, in one case, it led to disciplinary probation.
8. informal method of making nominal contributions to the financial support of his daughter.

9. no payments or future payment plans with respect to his student loan obligations.

10. employment termination in which he blamed others for the problems.

11. admissions from which it was reasonable to infer that Mr. Burdick possessed marijuana and offered it to students who were under the age of 18.

12. justification with respect to his use of marijuana, in part, by stating that he had to experience the situation to fully understand it.

13. rationalization of a system of values inconsistent with the conduct expected of a member of the New Hampshire Bar.

Mr. Burdick's system of values is so unique that the Committee believes that there is no other substitute than for the Court being able to read the applicant's own words. For this reason, I am enclosing a copy of Mr. Burdick's letter of June 27, 1991 with the Personal Statement as well as a copy of the transcript of the August 9, 1991 hearing. To complete the record, I am enclosing a copy of Mr. Burdick's letter of August 13, 1991, with enclosures.

Sincerely,

William R. Prigge
Chairman

Encl.

cc: Jonathan Burdick

May 15, 1991

APPENDIX H

Hon. W. Stephen Thayer,
Associate Justice
New Hampshire Supreme Court
Noble Drive
Concord, New Hampshire 03301

Re: Jonathan R. Burdick

Dear Judge Thayer:

The Committee on Character and Fitness has voted to recommend to the New Hampshire Supreme Court that Jonathan R. Burdick be denied admission to the Bar of the State of New Hampshire based on character and fitness considerations. The vote was unanimous among the six Committee members who were present and voting.

Mr. Burdick originally applied to sit for the July 1990 Bar Examination. His Petition and Questionnaire for Admission to the Bar of New Hampshire is dated April 27, 1990.

In response to question 8, he stated that he was placed on disciplinary probation at Idaho State University in 1985 or 1986 with a favorable resolution. He also said he was placed on academic probation at Idaho State in 1985 or 1986 with a favorable resolution.

Later in his petition, he explained that the academic probation occurred because he received a failing grade in all of his courses during the spring semester in 1984. Mr. Burdick said that he had withdrawn from all of his courses for personal reasons but had neglected to file formal withdrawal papers by a mandated deadline. He said he was having personal problems and was suffering from a mild depression at the time.

The applicant went on to state that he was placed on disciplinary probation for several weeks during the spring semester in 1987. He reported that he had begun writing poetry to, and philosophy papers about, a female student on whom he had developed a crush. He said they were both fairly shy and they had several friends in common. However, when it became clear to the young woman that he was going to keep writing to her but not speak directly with her, she became concerned and approached the Dean of Students. Mr. Burdick said the Dean asked him to stop writing to her and placed him on probation. He said he complied with the request and he was graduated at the end of the semester.

Mr. Burdick answered question 11 on the petition by stating that he had brought a tort action against Paul Rinden, P.A. which was dismissed on

August 9, 1989. He also wrote that he had been a defendant in a child support determination brought by the Massachusetts Welfare Department in 1987 in which a prior determination had been affirmed.

In response to question 12, Mr. Burdick attached a copy of his Law Student Affidavit submitted to the Supreme Court under Rule 36. The Affidavit shows that he was convicted in 1982 of unlawful entry (misdemeanor) and fined $100 plus $11.50 costs. Also in 1982, he entered a guilty plea to forgery (felony) with the following sentence: Judgment withheld; three years probation; $207 restitution and 90 days in jail at the Court's discretion. In 1988, a hearing was held on the forgery matter and an order was entered setting aside the guilty plea, dismissing the felony charge and discharging probation because had satisfied its terms. He also listed a speeding ticket in 1986.

In response to question 14, the applicant said that on two occasions during law school he was discharged or requested to resign from clerking jobs with law firms.

The first instance was with the Rinden Professional Association. He said Mr. Rinden had lost two senior law clerks and was not willing to hire additional staff. Mr. Burdick said the work piled up, deadlines were missed and Mr. Rinden became unbearably belligerent toward most of his remaining staff. He said the main reason for his departure was that Mr. Rinden yelled at him for his inability to locate a file. He said there were other reasons such as the fact that Mr. Rinden had him working on complicated matters which really required a more advanced student. Also, that Mr. Rinden expected him to conduct discovery not so much to develop the truth but rather to wear down the opposition. He said Mr. Rinden was too busy to give his staff proper guidance. Mr. Burdick said he tried to sue Mr. Rinden for wrongful discharge but a motion to dismiss was granted. He said he had tried to reconcile the differences between them in a letter but received no response.

The second instance involved the firm of Hibbard & Spinella where he worked as a title researcher from December 1989 until April 1990. He had a disagreement over the advancing of expenses one day and he also mentioned that "I was getting caught in a time crunch between work and law school and that juggling the responsibilities was becoming difficult. When he returned to the office after a day at several registries of deeds, he was informed that they had "put me on waivers" and that they would call him if they needed him.

By letter dated June 4, 1990, the Committee asked him to supply detailed information about the disciplinary probation, the suit against Rinden Professional Association, the child support determination case, the unlawful entry case, the forgery matter and the speeding ticket.

Mr. Burdick responded about two weeks later. With respect to the disciplinary probation, he referred to the information supplied with his petition "which discussed my avant-garde poesy antics."

He provided copies of pleadings of his case against Paul Rinden d/b/a Rinden Professional Association. Count One was based on a claim of constructive discharge, Count Two was based on a claim of negligent infliction of emotion distress and Count Three was based on a claim of intentional infliction of emotion distress. The matters were all dismissed.

With reference to the child support determination, Mr. Burdick reported that there was no arrearage. He said that his daughter was born in 1986. Although he had been engaged to the child's mother, they never married. Support became an issue about a month after he and the mother stopped living together in about October 1986. He began paying voluntary support but the mother applied for welfare benefits to help defray the costs of her education. Mr. Burdick was contacted by the welfare department for contribution and they negotiated payments of $50 a month while he was a full-time student and $200 a month during summers. The mother relocated to a different part of Massachusetts in a different district of the welfare department. A hearing was held and the earlier payment schedule was affirmed.

According to a memorandum drafted in December 1986 by Mr. Burdick, the forgery charge related to his employment with the William Anderson Company in Idaho Falls, Idaho. In 1982, at the age of 20, he was hired as a marketing research assistant which was a job that would involve a lot of sales work. The company sold and installed drip irrigation systems. He said he learned that Mr. Anderson had been helped by prayer in his decision to hire Mr. Burdick. He said this was the first indication of what he would eventually come to learn was a system of "religious totalism" which completely dominated the lives of Mr. Anderson and his employees. The applicant stated he soon felt pressure to excel as a supersalesman and also pressure to join in group prayers.

Mr. Anderson had promised the applicant that he would eventually be sent on sales trips to Florida, Hawaii or California. After about a month, Mr. Burdick said he felt ready for such a trip. He decided to surprise his boss by organizing a sales trip on his own to establish that he was a self-starter. Mr. Burdick said he prayed to Jesus Christ for guidance and he felt he had received a positive feeling about the trip. He decided to go to San Francisco because his younger brother would be attending a speech and debate tournament in that city.

The applicant stated that on a Sunday, June 13, 1982, he made a round-trip reservation with Western Airlines for a flight the next morning and returning on Friday, June 18. When he asked how much it cost, he

thought he understood the price to be $114. He believed that wages already due him would cover the cost of the flight and he planned to cover any expenses beyond what was owed him by the wages and sales he would make on his trip. He said he had not yet received a paycheck and did not want to spoil the surprise.

The next day, on the way to the airport, he stopped at the office at 7 a.m., removed a company check and typed it payable to Western Airlines for $114 and signed his own name at the bottom. He took a few extra checks for incidentals and possible emergencies as well as some literature about the Company's product. He knew he was not authorized to sign Company checks but he felt, he said, that this was an exceptional case because the Lord wanted him to go.

At the airport, Mr. Burdick said he discovered that the cost of the ticket was $414, not $114. He changed the check and made something of a scene until the clerk accepted the altered check. Once in San Francisco, the applicant wrote out a Company check for cab fare and a second Company check for a tip. As a former debater, he was able to secure a free room at the site of the debate and he said he then began making sales calls. One day he took his brother to lunch and paid the bill (some $60) with a Company check. He rationalized that Mr. Anderson traveled in style and would want him to do the same.

Mr. Burdick's sales efforts were not successful. When he called the office on Thursday of that week he was taken aback that Mr. Anderson expressed shock at what he had done. Mr. Anderson told him he was fired and could be facing felony charges when he returned to Idaho because Mr. Anderson had stopped payment on the checks.

According to the applicant he was in a state of disbelief. He had explained that he intended to cover the cost of the trip but Mr. Anderson said that it was irrelevant. Mr. Burdick concluded that somehow Mr. Anderson was the one in the wrong for having continuously praised him and then abandoning him for acting in good faith. While still in San Francisco, he went to a law library to look for materials which might bear upon cases of religious extremism which he felt would help his situation.

The next morning Mr. Burdick went to the airport and boarded the plane. Almost immediately, he said he was escorted off the plane and brought to a small office where airport security told him his return ticket would not be honored because of the stop payment order on the check that paid for it. For the next 24 hours, he said, he stayed at the airport trying to decide how to get home. Finally, he approached another airline and paid for a ticket with the one remaining Company check he had left.

Within a few days a warrant was issued for his arrest on the felony charge of forgery. Unable to meet bail or obtain counsel, he stated he spent

about a week in jail during which time he worked on his religious extremism defense. When he received his final paycheck he was able to retain a lawyer and was soon released on his own recognizance.

When Mr. Burdick had been out of jail a week, he and a friend became intoxicated while celebrating his re ease. By this point he had moved all of his belongings out of his apartment except for some pieces of furniture he said had been missing. At the time, he was convinced that his landlady had taken the items. He still had a spare key so he and his friend went to the apartment and drank a few beers. Mr. Burdick wrote:

> On the principle of revenge we began removing a large bookshelf as compensation for my losses, but the next door neighbors heard our drunken laughter. The police were called in, and soon we were on our way to the station.

After a few more days in jail, Mr. Burdick stated that he pleaded guilty to a misdemeanor charge of breaking and entering. He was sentenced to pay a $100 fine and to spend 10 days in jail with credit for time served.

He originally pleaded not guilty to the forgery charge, expressing his belief that his actions did not constitute forgery as defined by the Idaho Code. His lawyer did not press this issue nor did she have any interest in his religious mind control defense. His lawyer counseled him to change his plea to guilty and plea bargain. Initially, he said, he maintained his innocence but eventually, with the threat of prison hanging over him, he accepted her advice and changed his plea..

Mr. Burdick was sentenced on his 21st birthday. Judgment was withheld with three years probation. His probation officer spelled out all of the restrictions to which he would be subject. The restrictions included reporting to the probation officer once a month. For the first three months, he worked, attended a few classes and attended his probation meetings. Mr. Burdick stated:

> After three months had elapsed, however, I became unbearable indignant at what I considered to be humiliating and degrading; I decided to cease attending my monthly meetings with Stu and move to Pocatello. There he would not be able to walk into my apartment anytime he felt like it to grill me on the details of my personal life.

He wrote that he knew of the possible consequences of his decision but his lawyer had told him that all the judge had really wanted was for him to go back to college. Mr. Burdick said:

> I felt that if I did so I would blend into the university environment and that the books on my case would eventually be closed. I felt that any charge of probation violation really oughtn't to have any kind of bearing whatsoever on the question of whether or not I was guilty of Forgery, and that any penalty levied against me for violating probation would be worth waiting for the statute of limitations for the violation.

Mr. Burdick wrote that he met a young woman, they began living together in 1985 and a daughter was born to them on April 6, 1986. They moved to Massachusetts for the summer in 1986. He said that all this time he had fears of being punished for violating probation. While in Idaho over the Labor Day holiday in 1986, Mr. Burdick's brother said he had heard there was a warrant out for Mr. Burdick's arrest. As a result, he and his finance decided to remain in New England for the rest of the year.

At this point, he said that the young woman's mother indicated that her daughter could not and would not marry Mr. Burdick until and unless he got his legal problems resolved.

The record reflects that on September 26, 1986, Mr. Burdick wrote to Judge William W. Black. He said he was writing in the hope of resolving the probation violation and that a bench warrant had been issued in April 1983. The letter to Judge Black contained the following comments:

> Since my attorney advised me that it was the opinion of Judge Thomas that I should return to college, I did -- but I inferred incorrectly that this would render me free from my obligations to my Probation Officer. (I stopped reporting in). At the time, I was indignant because I believed my plans for a stellar defense case were waylaid by my attorney and the mixed blessings of plea-bargaining; at the time of this writing, however, I realize that this represented poor judgment on my part. I am currently residing in Massachusetts, I have a good job, a wife and a six-month old baby girl -- but I would like to return to Idaho State University next (Spring '87) semester and complete my degree work for a B.A. in Philosophy. My wife and I are concerned about the outstanding warrant for my arrest, however, I feel

it incumbent upon myself to lay this matter to rest once and for all.

Mr. Burdick obtained counsel and appeared in Court on the probation issue on January 12, 1987. Restitution was paid in full and probation was continued. Ultimately, according to Mr. Burdick's Idaho counsel, Judge Larry M. Boyle signed an order on September 16, 1988 setting aside his guilty plea and dismissing the felony charge. Mr. Burdick was also released from probation and the probation order was amended to show that he had satisfactorily completed his probation.

Mr. Burdick's submission to the Committee also disclosed that his speeding ticket in Idaho in 1986 involved a charge of driving 72 mph in a 55 mph zone.

The Committee scheduled a personal interview with Mr. Burdick for July 12, 1990.

At the interview Mr. Burdick first addressed his disciplinary probation at Idaho State University. He said he had begun writing to a girl. She was a passing acquaintance and he wanted to know her socially. Sometimes he wrote to her daily, all told 20 to 25 pages over the course of about three weeks. He said writing is very important to him and the girl never asked him to stop. She did report the matter to the dean of students and Mr. Burdick was put on disciplinary probation during his last semester of college to ensure that he would stop writing to her. He said the same thing happened with another girl two years earlier but no action was taken in the first matter. Mr. Burdick said he has written to about four dozen women but others have not complained. He estimated that he did not know about one-third of the women; that he casually knew about one-third of the women; and that he knew well the remaining one-third.

Mr. Burdick briefly discussed his termination from Rinden Professional Association and Hibbard & Spinella.

The applicant also addressed his child support obligations through the welfare department in Massachusetts. He said he had not been contacted since graduation but that he would like to continue the $50 a month payments until after the Bar Examination at which time a hearing would be in order. He said that if the welfare payments stop he has agreed with the child's mother to work out reasonable payments. He also said that the family of the child's mother is well off and they are seeing to it that the child is receiving good care.

Turning his attention to the forgery charge, Mr. Burdick said he was young, impressionable and gullible. He attributed the matter to youthful misjudgment plus some overreaching by his employer. The applicant stated that he had some pay coming and believed it would cover his airline ticket.

When Mr. Anderson stopped payment on the check to the airline, Mr. Burdick was charged with forgery. He said he was not going off on a lark and he did it in good faith and with no criminal intent.

Mr. Burdick said that forgery is a felony that carried one to 14 years in jail so he plea bargained rather than pursue the risky defense that it was his employer's fault. He said the whole case was based on the airline ticket check and that a withheld judgment is, in effect, a judgment held in abeyance.

He stated that once he had learned that payment on the checks had been stopped, he still had one check left and he used it because he was hungry and scared and indignant. He said he felt he had been wronged and he had no qualms about writing the last check for an airline ticket even though he knew it would not be honored. He said that he felt he had no choice and that is seemed like he had to do something wrong to get out of the situation.

The applicant told the Committee that he would never do it again because it was "dumb" and "stupid" although he does not feel it was morally or criminally wrong. He said he felt it was unconventional but far from criminal because there was no mens rea. Mr. Burdick said he did not feel that it was forgery. When the Committee asked what it was, if not forgery, Mr. Burdick said embezzlement or larceny.

Mr. Burdick said that he had learned a lesson from the incident and that he had gotten close to the edge and had gotten burned but that nothing like it will happen again. Looking back on it, he told the Committee, he thinks the matter was somewhat excusable but not totally excusable. After entering the plea he violated probation which he feels is consistent with someone who felt he had been wronged.

Mr. Burdick said he still does not take full responsibility for the matter. He said he viewed it as 50 per cent his fault and 50 per cent his employer's fault. In 1986, he said he felt it was 90 per cent the fault of his employer and 10 per cent his fault.

Addressing the unlawful entry charge, the applicant said there was no excuse for it; that it was a stupid thing to do and he has not done anything like it since.

At the conclusion of the interview, the Committee decided to write to the Child Support Enforcement Unit of the Massachusetts Welfare Department for further information. It was also decided to request a credit report and history from the applicant and to request Mr. Burdick's disciplinary records from Idaho State University. Pending receipt of this information, further consideration of Mr. Burdick's application was tabled.

The letters were mailed promptly.

Shortly before the July 1990 Bar Examination, the Committee learned that Mr. Burdick had not graduated in May and therefore could not sit for the examination.

By letter dated August 10, 1990, Ernie Naftzger, Associate Dean of Students at Idaho State University, transmitted a packet of information relating to the applicant.

An intra-University memorandum dated July 3, 1984 from David J. Sanna, then Associate Dean of Students, states that Mr. Burdick first came to his attention during the fall semester in 1983 when a letter he had written to a female student came to the Dean's attention. The memorandum states that the student was alarmed at the contents of the letter and that she did not know who Mr. Burdick was.

The Dean next had contact with Mr. Burdick when the applicant approached another female student as if he knew who she was but again the student had not had contact with him. Mr. Burdick had found out the second student was a nursing student and he asked her if she wanted to see a scalpel he had in his pocket. She reportedly said no. According to the memorandum, Mr. Burdick then said "you are a nursing student. You know what scalpels are used for."

The Dean stated that Mr. Burdick then sent a second letter to the first student. The Dean spoke with Mr. Burdick and concluded that neither the verbal contact nor the letters were threatening. Further, the Dean apparently told Mr. Burdick that he would consider further contact with the women as harassment. The applicant stopped sending the letters to the first student.

In December 1983, the Dean received a call from the Chairman of the English Department that Mr. Burdick had made an inappropriate comment to a female student in an English class and had stared at her making her uncomfortable. The woman complained to the instructor who, in turn, warned Mr. Burdick. The behavior stopped.

The memorandum goes on to state that a political science professor had given the Dean a bluebook exam submitted by Mr. Burdick. The Dean wrote: "Again, the writing seems to me to be irrational. It is replete with vagaries, profanities, name calling and perhaps even some mild threats."

A second memorandum from Dean Sanna is dated August 7, 1984 and it indicates that he had received another complaint about Mr. Burdick. The complaint was filed by a woman and her husband about several incidences that . . . "have led to a real feeling of concern and even fear on the part of the woman and her husband." A copy of the August 7, 1984 memorandum is attached to this report.

On April 9, 1987 a student signed a note that she had given Dean Naftzger letters she had received from the applicant and that she felt

harassed and wanted the University ". . . to take all necessary action towards having the letters stopped and in dealing with J. Burdick." The next day Dean Naftzger sent Mr. Burdick a letter notifying him that a complaint had been received charging him with violating the section of the student code dealing with hazing. A copy of Mr. Burdick's response dated April 15, 1987 is also enclosed. By letter dated April 20, 1987, Dean Naftzger confirmed with Mr. Burdick that he would cease writing to the woman and that he had accepted the sanction of conduct probation which was effective through May 16, 1987, the date of graduation.

By letter dated September 18, 1990, Mr. Burdick sent the Committee a copy of a credit report and explained that he had not submitted it earlier because he had failed a course his last semester in law school and was not able to graduate in time to sit for the July Bar Examination.

By letter dated November 30, 1990, Mr. Burdick notified the Clerk's office that he wished to sit for the February 1991 Bar Examination. In updating his petition, he reported additional employment at Guardsmark, Inc. and at Waterville Valley Academy.

On February 8, 1991, the Committee received a letter from Joseph W. Healy, Jr. of the Child Support Enforcement Unit in Massachusetts. He said that the reason that the Unit was involved in Mr. Burdick's support payments is the mother of the child chose to go on financial assistance because she was not working and Mr. Burdick had limited income because he was a student and thus the small support order. He said "Mr. Burdick has always been cooperative with the Child Support Enforcement Unit."

Mr. Burdick sent the Clerk's office a listing of his student loans on February 15, 1991. The loans total $77,373.44.

On April, 29, 1991, the Committee received an employer reference form from the Business Manager of Waterville Valley Academy's parent corporation. It stated "There are facts you must be made aware of concerning this applicant. However, due to the nature of the aforementioned and my responsibility concerning confidentially [sic], I must have a specific individual to address. Accountability is mandatory."

The Business Manager, Stuart Bownes, was directed to send his comments to the Committee's Administrator. On May 1, 1991, the Committee received Mr. Bownes' letter. He stated that Mr. Burdick's employment was terminated in late November or early December 1990; that officials at Waterville Valley Academy asked him to resign and he did so; that the resignation was based on an accusation that Mr. Burdick had used an illegal controlled drug while participating in a school function; and that Mr. Burdick had been accused of offering the drug to some students.

A second personal interview was held with Mr. Burdick on May 6, 1991.

At the beginning of the interview, Mr. Burdick was asked why he had not disclosed at the first interview that he had not yet graduated from law school. It was pointed out to him that he had a continuing duty to update his petition.

Mr. Burdick said he failed a course his last semester in law school. He cited several factors that contributed to his failing the course, such as: a) faulting the instructor, b) experiencing problems with the location where he had to park his truck on the day of an exam and c) receiving a visit from an old girl friend while he was studying for an exam. As a result of failing the course, he was working on a paper in the early summer of 1990 in order to earn the credits to graduate. However, the faculty did not have an opportunity to vote on the issue until it was too late to take the July 1990 Bar Examination. He said he had a lot to talk with the Committee about on July 12, 1990 and he did not think that failing to graduate with the rest of the class was a matter within the province of the Committee, i.e. it was an academic issue not an ethical issue.

With respect to his employment with Waterville Valley Academy, Mr. Burdick said he answered an ad in a newspaper for tutors sometime in September of 1990. After an interview he was hired to tutor physics and Latin. He began working on November 3 or 4, 1990.

He said he was kind of an outcast because he did not know anyone at the Academy and he was not really a teacher. He described the students and faculty at the Academy in less than flattering terms.

The applicant said that one of the first events after he began his employment was a hike into the mountains to Carter Notch. He said he did not want to go but he was "almost shanghaied" into going. He was told that he needed to be a driver.

On the way to the hiking trails, he said, he was the driver of the second of three vans. He said the driver of the first van was traveling too fast and he was trying to keep up. As a result, all three were pulled over by a police officer but no tickets were issued.

When they reached their destination, Mr. Burdick said he did not feel comfortable with the group so he went off on his own into the woods. On one such trip, several students approached him stating that everyone at the Academy was enamored with a particular substance. He said the students solicited him.

Mr. Burdick said he would not admit or deny anything and he would only speak in terms of hypotheticals. He said he was not an habitual drug user. He said he was willing to admit that in certain circumstances he has used marijuana in the past but that he would not address a specific instance because of his right not to incriminate himself.

He said he used marijuana in high school, less in college and probably even less in law school. He said his philosophy is that the substance should be regulated and he compared it to alcohol and prohibition.

The applicant called possession of marijuana a "victimless crime" and he said he thinks an isolated incident of possession of marijuana in which no one is harmed is "virtually inconsequential." He said he believes he has the right to incapacitate himself in certain ways. Mr. Burdick said that if it is not abusive, he does not understand the problem. He referred to the "Judge Ginsburg syndrome."

Mr. Burdick said that even his father, who has a responsible position, has tried the substance. He said he would like to make a clean break with that part of his life but it is difficult because marijuana is used by some of his acquaintances.

He told the Committee that marijuana use is prevalent in the community and that if he is going to adequately represent people he has to experience what is going on in their world. He mentioned criminal law as an area in which he would like to practice.

With respect to the Waterville Valley Academy incident, he said that he can only speak in hypotheticals because he was exercising his fifth amendment rights but if there was an incident it probably involved marijuana in very small amounts. He said that maybe he regressed. He said that his main stress that may have caused a relapse is the fear that he may not be permitted to be a lawyer. He said that if he were allowed to practice law he knows that he would have no trouble renouncing that part of his life.

He noted that he did not have a good relationship with the students and when they solicited him he thought he might make the best of a bad situation by gaining their trust. He said the students were "almost 18" and he did not sell anything. Mr. Burdick said he reacted in a certain way and he wishes he had acted differently.

The applicant said the students brought a complaint against him because the night before he was proctoring a study hall and he wrote what was probably the longest list of violations that anyone has ever written at the Academy. He said this led to poor rapport with the students.

Mr. Burdick said that when he was confronted by the administration at the Academy he neither admitted nor denied the allegations of using an illegal drug and offering it to some students. He said he was given an opportunity to resign and he did so on December 13, 1990. He said he did not like his job and decided to just leave.

Turning to the subject of financial obligations, Mr. Burdick said he kept up his child support obligations through law school and actually overpaid by $750 which resulted in a refund from the Massachusetts Child

Support Enforcement Unit. [The day after the interview Mr. Burdick supplied a letter from the Unit which verified his statement.]

He said that the mother of his daughter was in school and as a result she was receiving welfare. He stated that there was a Massachusetts court order that he pay $50 a month to the Commonwealth while he was in law school and the child's mother was on welfare. The applicant said the mother graduated last May and is no longer on welfare. He has not been contacted by the Child Support Enforcement Unit and he has not been able to confirm whether the order is still in effect. He believes it not longer applies now that welfare is out of the picture. He said he has made his daughter's mother aware of her legal rights and he has asked her to hold off on taking him to court until he is working full time and is earning more money. In the meantime, he said he sends her money when he can. Since his law school graduation, he estimated he has sent her a couple hundred dollars, maybe $400. He said he knows his daughter is being well cared for financially, he buys her gifts when he can and he wants for her to attend the best schools. He believes he last visited with her the first week in March.

Mr. Burdick estimated that his 1990 gross income was about $6000 and that he currently makes about $80 a week working part time.

He said his student loans have not been reduced from the $77,373.44 he reported on February 15, 1991. He said he has explained his situation to his student loan creditors. If he is not allowed to practice law, he explained, he will have to find a way to restructure and discharge his obligations.

Also, Mr. Burdick said he has a lot of general creditors and he tries to shuffle them around as best he can and make partial payments.

With respect to the forgery issue, Mr. Burdick said he has had a lot of time to think about it and it is personally his fault and that his employer was overzealous. He then said "It was my fault." He added that he could have done a good job either prosecuting the charge or defending it.

He said that he is phasing out the practice of introducing himself to women by writing to them. He indicated that he has only used the approach sporadically in law school. He said that for every woman upset by it, there is one who liked it.

Mr. Burdick also indicated that he was fired from a position as a security guard with Guardsmark, Inc. at a Digital facility. He held the position from the first week in August 1990 until his termination during the first week in January 1991. He told the Committee that he had been promised a raise but he and two other guards did not receive them. After the passage of time, he called the corporate headquarters in Memphis, Tennessee to ask about the raises. He said this resulted in his receiving a telephone call from the Boston office of the Company telling him that calling Memphis "was the

quickest way to get fired, and you just did." He also said that representatives of the Company failed to tell him when he was hired that he needed to obtain a security guard license from the State of New Hampshire. Mr. Burdick prepared a draft of a wrongful discharge suit but decided not to pursue it after consulting with counsel. [In a letter submitted to the Committee the day after the interview, Mr. Burdick said counsel felt it would not be worth pursuing based on lack of substantial damages. Also they learned the employer's contract with Digital had not be renewed.]

As the interview came to a close, Mr. Burdick said that at this point he has been under a lot of pressure and he has to question his own judgments. He said he could not fault the Committee for not "passing" him. If such were to occur he said he hoped to satisfy the Committee's concerns and be admitted at a future date.

Based on all the information contained in this report, the Committee must make this adverse recommendation. The following matters are of particular concern to the Committee:

1. Mr. Burdick failed to recognize in 1982 that it was wrong for him to take and use company checks without authorization.

2. Even after he was put on notice that he had acted against his employer's wishes and that payment on the checks had been stopped, he still used a remaining check to pay for an airline ticket back to Idaho.

3. The applicant attempted over a prolonged period to place the blame on his employer rather than accept responsibility for his actions.

4. As recently as July 12, 1990, Mr. Burdick told the Committee that he did not feel his actions were morally or criminally wrong.

5. After being placed on probation, he attended monthly meetings for three months and then stopped because he considered it humiliating and degrading. He took the position "that any penalty levied against me for violating probation would be worth waiting for the statute of limitations for the violation."

6. Just one week after being released from jail after being arrested on the forgery charge, Mr. Burdick drank to excess and though "the principle of revenge" justified him in removing a bookshelf belonging to his landlady.

7. Mr. Burdick's approach of writing to women so concerned some women that it resulted in a disciplinary probation at Idaho State University.

8. The applicant has only an informal method of contributing to the financial support of his daughter and his payments since his law school graduation have been nominal. The Committee concluded he has not met his burden that he acted responsibly regarding his support obligations.

9. At least since February 15, 1991, he has made no payments on his student loans nor has he provided any written agreements showing that he has worked out a future payment plan with any of the creditors.

10. Since he has been in law school, Mr. Burdick has been terminated or asked to resign from Rinden Professional Association, Hibbard & Spinella, Waterville Valley Academy and Guardsmark, Inc. In each case, he blamed others for the problems.

11. Despite saying he neither admitted not denied the charges, he in fact made several admissions from which it is reasonable to infer that Mr. Burdick possessed marijuana and offered it to students of Waterville Valley Academy, who were under 18 years of age, as recently as six months ago.

12. Mr. Burdick justified his actions with respect to use of marijuana, in part, by stating that he has to experience the situation to fully understand it.

13. The applicant continues to rationalize a system of values that is inconsistent with the conduct expected of a member of the New Hampshire Bare.

Pursuant to Supreme Court Rule 42(5)(j), a copy of this report is being mailed to Jonathan R. Burdick by certified mail, return receipt requested, so that the applicant may be fully aware of the content of the report and so he may have an opportunity to request a hearing before the Committee, to answer and explain the matters contained in this report.

Sincerely,

William N. Prigge
Chairman

WNP/bjl
Enclosures

cc: Jonathan R. Burdick

APPENDIX I

RULE 42. ADMISSION TO THE BAR; COMMITTEE ON CHARACTER AND FITNESS

(5)(a) All persons who desire to be admitted to practice law shall be required to establish their moral character and fitness to the satisfaction of the Standing Committee on Character and Fitness of the Supreme Court of New Hampshire in advance of such admission.

(b) The standing committee on character and fitness shall be appointed by the Supreme Court of New Hampshire. Its members shall be seven (7) in number and shall include (i) six (6) members of the New Hampshire Bar Association as follows: (a) one (1) member of the board of bar examiners; (b) one (1) member of the committee on professional conduct; (c) the attorney general of New Hampshire or his deputy; (d) the clerk of the supreme court or his deputy; and (e) two (2) other members of the New Hampshire Bar Association, one of whom shall be designated chairman of the committee; and (ii) one (1) layperson.

(c) The terms of the attorney general and of the clerk of the supreme court as members of the standing committee on character and fitness shall be coterminous with their terms of office; and, in the absence of either the attorney general or the clerk of the supreme court, his deputy is authorized to act as an alternate, exercising all the powers of an appointed member of the committee. Each other member of the standing committee shall be appointed for a term of three (3) years and shall be eligible for reappointment. Members of the committee shall receive no compensation for their services, but their reasonable expenses shall be funded from the fee (hereinafter outlined) paid by those persons seeking admission to practice law in the State of New Hampshire.

(d) Each person shall be immune from civil liability for all of his statements made in good faith to the committee, the office of the attorney general or to this court or given in any investigation or proceedings pertaining to the application. The protection of this immunity does not exist as to statements made to others. The committee, its staff, counsel, investigators and any members of any hearing panels, shall be immune from civil liability for any conduct arising out of the performance of their duties.

(e) Persons seeking admission to the practice of law shall, not later than May 1 of the year in which they intend to take a July examination and not later than December 1 next preceding the year in which they intend to take a February examination, file with the committee on character and fitness and

with the clerk of the supreme court the petition and questionnaire on a form to be furnished by the clerk. The questionnaire shall also contain a certificate signed by two (2 persons certifying the applicant's good moral character. The questionnaire shall be executed by the applicant under oath. The foregoing requirements as to the time of filing may be waived by the committee for good cause shown.

(f) Any person who weeks admission to practice law in the State of New Hampshire shall at all times have the burden of proving his good moral character before the committee on character and fitness, and the Supreme Court of New Hampshire. The failure of an applicant to answer any question on the petition and questionnaire or any question propounded by any member of the committee on character and fitness of the supreme court, or to supply any documentary material requested by them or any of them, shall justify a finding that the applicant has not met the burden of proving his good moral character.

(g) Any person who seeks admission to practice law in the State of New Hampshire shall agree to waive all rights of privacy with reference to any and all documentary material filed or secured in connection with his application. The applicant shall also agree that any such documentary material, including the character questionnaire, may be offered into evidence, without objection, by the committee on character and fitness in any proceeding in regard to the applicant's admission to the practice of law.

(h) All matters referred to the committee for investigation shall be confidential. No member of the committee at any time, either while a member of the committee or thereafter, shall disclose any matter in any file, except at the request of the committee, or the supreme court or unless legally required to do so. All minutes or records circulated to members of the committee shall be kept confidential. All records relating to matters referred to the Committee shall be retained in the committee's permanent files.

(i) Upon receiving the petition and questionnaire, the committee on character and fitness shall promptly (a) verify such facts stated in the questionnaire, communicate with such references given therein, and make such further investigation as it may deem desirable or necessary; (b) if it deems necessary, arrange for a personal interview with the applicant; (c) consider the character and fitness of the applicant to be admitted to the practice of law; and (d) transmit to the supreme court a report of its investigation and its recommendation in regard to the character and fitness of the applicant for admission to the practice of law.

(j) If the recommendation of the committee on character and fitness is against admission, the report of the committee shall set forth the facts upon which the adverse recommendation is based and its reasons for rendering an adverse recommendation. The committee shall promptly notify the applicant

about the adverse recommendation and shall give the applicant an opportunity to appear before it and to be fully informed of the matters reported to the court by the committee, and to answer or explain such matters.

(k) If, following such appearance, the committee is still of the opinion that an adverse report should be made on the application, it shall first give the applicant the privilege of withdrawing the application. If the applicant elects not to withdraw the application, and the second report and recommendation of the committee to the court is against approval of the application, the court, upon receipt of the report with the adverse recommendation by the committee, may grant the application or shall require the applicant to show cause why his application should not be denied.

(l) The fee for the character and fitness investigation shall be in such amount as the supreme court shall from time to time determine. This sum shall be paid to the treasurer of the New Hampshire Bar Association in addition to the fee paid to the clerk of the supreme court for the taking of the examination for admission to practice. Both fees shall be nonrefundable.